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# Understanding Inequality and the Justice System Response: Charting a New Way Forward

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# I. Introduction

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It has become virtually impossible to ignore the growing crescendo of attention to the topic of inequality in the United States. For instance, last December, President Obama spoke about economic mobility and concluded that “a dangerous and growing inequality and lack of upward mobility ... is the defining challenge of our time” (December 4, 2013). Thomas Piketty’s 685 page book, *Capital in the Twenty-First Century* (2014), leaped to number one on the *New York Times* best seller list upon release. And “The Case for Reparations” (2014), Ta-Nehisi Coates’s recent *Atlantic* article examining slavery, Jim Crow, and racist housing policy, set a single-day traffic record on the *Atlantic*’s website and record sales in print (Roig-Franzia, 2014).

The justice system, too, has become part of the discussion regarding inequality. Witness the National Research Council’s recent attention to the causes and consequences of high rates of incarceration in the United States, especially for minority offenders (see National Research Council, 2014). Along similar lines, we have heard heated debates about the stop-and-frisk policies of police in New York City and elsewhere (see Bergner, 2014 and Zimring, 2012). More broadly, Michelle Alexander has referred to “mass incarceration” and other justice system policies as “The New Jim Crow” in America (2012; see also Wacquant, 2001).

Entering these rough waters is not for the timid, and my goals for this paper are modest. The first part of this paper will address what is known about crime, offenders, and victims. The second part will examine what is known about the justice system response. Here, I will pay particular attention to how the justice response has, in fact, exacerbated inequality. At the same time, I argue that it is crucial to recognize the complexities surrounding this issue. The third part of this paper will discuss promising directions for future research, as well as directions for future work on programs, policies, and practices to reduce inequality related to justice outcomes for youth ages 5 to 25 in the United States.<sup>1</sup> First and foremost, I will start with the known facts. Facts are the foundation for setting a strong research agenda and creating policies and programs that will reduce inequality in the United States (see Stiglitz, 2014). My overall approach will be to focus on future research and policies that are supported by known facts and theory rather than ideology and false assumptions. As Daniel Patrick Moynihan famously stated “Everyone is entitled to their own opinion, but not to their own facts.”

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1 In the United States, the juvenile justice system typically focuses on youth under the age of 18. The criminal justice system processes criminal offenders aged 18 or older. I will use the more generic justice system nomenclature to cover the target population of youth ages 5 to 25.

## II. Stubborn Facts About Crime, Offenders, And Victims

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One major development in criminology over the last 25 years is the recognition that there is no single cause or risk factor for crime and violence. Indeed, there are multiple pathways to crime and violence. We also know from the Philadelphia Cohort Study that chronic offending begins during childhood and adolescence. The researchers of this study found that six percent of the cohort (followed to age 18) were responsible for more than half of the criminal offenses and two-thirds of the violent crime generated by the total cohort. In other words, 627 boys committed more than 5,000 offenses by age 18 (Wolfgang, Figlio, and Sellin, 1972: 105).<sup>2</sup> Chronic offenders in particular have multiple risk factors in their background, including *individual* factors such as hyperactivity, impulsivity, and attention deficit; *family* characteristics, especially single-parent households and poor family functioning and child rearing practices; *school* factors like poor school achievement and low commitment to school; and *peer* factors, especially associating with delinquent peers and gang membership. In addition, *community* influences such as concentrated poverty, inequality, race and family composition, and neighborhood disorder and change are important risk factors of criminal offending, especially violence. Moreover, these factors may turn out to be cumulative and interact with one another over time, which would have important implications for policy and practice.

My focus here is on common law crimes—i.e., the crimes that get people arrested, convicted, and sent to prison and/or a juvenile detention center—which include murder, rape, robbery, assault, burglary, motor vehicle theft, larceny, and arson (see Hindelang, 1978). For these kinds of crimes, the known patterns of offending are remarkably stable across age, gender, race/ethnicity, and socio-economic status, regardless of the data source (official criminal justice records vs. self-report surveys of offending), crime type (e.g., violent crime vs. property crime), or time period (1970 vs. 1980 vs. 1990 vs. 2010).<sup>3</sup>

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2 This finding was confirmed in a second birth cohort in Philadelphia (see Tracy and Kempf-Leonard, 1996), as well as in numerous longitudinal studies in the United States and around the world.

3 Whether the results apply to other crime types like so-called white-collar crime, corporate crime, or consumer fraud such as identity theft is beyond the scope of this paper.

## A. What are the known facts about offending?

- Crime, especially serious crime, is the province of the young. The relationship between age and crime has been called “invariant”—the peak age of offending is mid-to-late adolescence, and the age–crime curve shows a rapidly declining pattern in the 20s and beyond (Gottfredson and Hirschi, 1990). In the aggregate, crime is most likely to occur between the ages of 15 and 25.
- Crime, especially serious crime, is heavily dominated by male offenders. This fact is confirmed not only by official crime statistics, but by studies using self-reports. According to the National Research Council, “The most consistent pattern with respect to gender is the extent to which male criminal participation in serious crimes at any age greatly exceeds that of females, regardless of source of data, crime type, level of involvement, or measure of participation” (Blumstein, Cohen, Roth, and Visser, 1986: 40).
- The relationship between race, ethnicity, and crime is complex.<sup>4</sup> On one hand, the majority of those arrested, as well as those self-reporting crime, are white. On the other hand, crime is disproportionately concentrated among blacks and other minorities when examining rates of offending while taking into account population size. This is especially the case for crimes like homicide and robbery. In self-report surveys, blacks report more involvement in serious crimes, as well as more frequent offending overall. According to the National Research Council, “combining data from several studies with criminal participation broadly defined as nontraffic offenses, the black/white ratio averages 1.8:1; for index crimes<sup>5</sup>, the ratio averages, 3.2:1” (Blumstein, et al., 1986: 41; see also Sampson and Lauritsen, 1997: 324-333; Tonry and Melewski, 2008; and Tonry, 2010).
- Like race, the relationship between socio-economic status and crime is complicated due to poor conceptualization and measurement. We know that more serious and more frequent criminal offending is found among those of low socio-economic status. This is especially the case for crimes like homicide and

4 Data on race and ethnicity in crime and justice processing are notoriously poor. As a result, one is often able to focus only on comparisons between blacks and whites (see Sampson and Lauritsen, 1997; Hawkins, Laub, and Lauritsen, 1998; and Peterson, Krivo, and Hagan, 2006).

5 Index crimes are defined by the FBI as including homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson.

robbery. In self-report surveys, respondents from low socio-economic status groups report more involvement in serious crimes, as well as more frequent offending overall (Blumstein, et al, 1986: 47-49).

Like criminal offending, patterns of criminal victimization across age, gender, race/ethnicity, and socio-economic status for common law crimes reveal remarkable stability. This is true using data from the National Crime Victimization Survey as well as official criminal justice records such as the FBI’s Supplemental Homicide Reports.

## B. What are the known facts about victimization?

- Age is one of the strongest correlates of victimization. The NCVS data show an inverse relationship between age of the victim and the risk of both personal and household victimization. Rates of victimization peak for youth and young adults in the 16 to 24 age group and decline as age increases. The relationship between age and victimization is especially strong in homicide, aggravated assault, and robbery.
- Victimization rates for males are considerably higher than comparable rates for females. The relationship between sex and victimization is especially strong in homicide, aggravated assault, and robbery. One exception to this pattern is sexual assault.
- The NCVS data tell us that the rate of violent victimizations—especially aggravated assaults and robberies—is greater for blacks than for whites (see Sampson and Lauritsen, 1997: 318-324). The data for homicide are especially striking. Using data from the National Center for Health Statistics, Lo and colleagues show that the homicide victimization rate for black males ages 15 to 24 is more than seven times the rate for white males ages 15 to 24 (Lo, Howell, and Cheng, 2013: 126). Moreover, these black–white rate disparities have persisted for more than 50 years.
- Income is also related to the risk of personal victimization. As income goes up, risk goes down. Rates of burglary are also higher for those with low income.

It is important to recognize that there is a great deal of overlap between the demographic characteristics of offenders and victims. Gottfredson and Hirschi have written, “It turns out that victims and offenders tend to share all, or nearly all, social and personal characteristics.

Indeed, the correlation between self-reported offending and self-reported victimization is, by social science standards, very high” (1990: 17). In fact, the link between offending and victimization has been found across time, place, and for various subgroups in the population. Moreover, it is significant regardless of the type of data used or the type of offending or victimization under consideration. It persists despite controls for demographic correlates and lifestyle characteristics such as drug or alcohol use, time spent with delinquent peers, gang involvement, or other measures of activities. This so-called “victim-offender overlap” has not received the attention it deserves (see Lauritsen and Laub, 2007).

Finally, we have known for a long time that crime, especially violent crime, is concentrated by place. In his recent book, *Great American City*, Robert Sampson demonstrates the enduring effect of neighborhoods on crime and violence, as well as a wide range of social phenomena, including health, civic engagement, infant mortality, teen births, altruism, and immigration. With respect to crime patterns in the city of Chicago, Sampson shows that, despite crime declines over the last two decades, high rates of violence persist in the most violent areas, just as low rates of violence persist in areas with historically less violence. Sampson concludes that “legacies of inequality,” including crime, are “persistent in terms of neighborhood concentration, especially for black areas” (2012: 119). Thus, it appears to be the case that structural disadvantage and social organization of neighborhoods affect the behavior of residents.

In the same vein, Patrick Sharkey (2013) examines racial inequality and disadvantage across generations and concludes that place plays an important role in reproducing racial inequality over time. He argues that neighborhoods are stratified, with African-Americans living in places that are more segregated and less affluent than whites. Moreover, his findings “make clear that neighborhood poverty experienced in one generation lives on in families to affect the life chances of the next generation, creating a cross-generational legacy of disadvantage” (2013: 167). *Stuck in Place*, the title of his book, says it all.

The basic fact is that criminal offending and criminal victimization for common law crimes are not randomly distributed across persons and places. Inequalities are present in patterns of serious criminal offending and serious criminal victimization *prior* to any contact with the justice system. Chronicity in offending is also related to gender, race, and social class (see Wolfgang et al., 1972, Blumstein et al., 1986, and Tracy and Kempf-Leonard, 1996). One can think of these as *inputs* to the justice system.

# III. Stubborn Facts About The Justice System Response

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It is well recognized that there is differential processing by age, gender, race/ethnicity, and socio-economic status throughout the justice system process, starting with police stops and citations, through incarceration and parole. That is, in addition to criminal behavior, the justice system responds to the status characteristics of offenders and victims. A large body of empirical research has established that the seriousness of the offense, as well as prior criminal behavior, are important determinants of the decision making process in the justice system (see Gottfredson and Gottfredson, 1980; Sampson and Lauritsen, 1997; and Rosich, 2007). Differences in offending in common law crimes across age, gender, race/ethnicity, and socio-economic status are thus built into the system response. Moreover, structural context matters as well. Sampson and Laub (1993a) found that the structural characteristics of counties, especially indicators of concentrated poverty and racial inequality, were important in explaining variations in juvenile justice processing—namely, formal petitioning, predisposition detention, and out-of-home placement of juveniles. The justice system response is also linked to neighborhoods. In his extensive study of Chicago neighborhoods, Sampson found “a staggering differential” in the rates of concentrated incarceration and race at the neighborhood level. For instance, he states, “West Garfield Park has a rate *forty-two times higher* than the highest-ranked white community on incarceration, Clearing (4,226 vs. 103 per 100,000)” (2012: 113).<sup>6</sup> Thus, it is crucial to distinguish analytically the disparities and inequalities that are input to the justice system, and those disparities and inequalities that are the resulting output from the justice system.

Of course, overrepresentation could be the result of differential criminal propensities, as well as more extensive criminal histories, both of which play a crucial role in justice system decision-making.<sup>7</sup> Sampson and Lauritsen

have concluded that “there is little evidence that racial disparities result from systematic, overt bias” (1997: 311). More recently, Tonry and Melewski (2008) have concluded that racial disparities result, in part, from the higher rates of commission of serious violent crimes by blacks. At the same time, there is strong evidence that political responses such as the “War on Drugs” and sentencing policies for violent offenders during the 1980s and 1990s “exacerbated the disproportionate representation of blacks in state and federal prisons” (Sampson and Lauritsen, 1997: 311; see also Tonry, 1995, Tonry and Melewski, 2008, Tonry, 2010, and National Research Council, 2014).

In addition, some of the very factors that juvenile court probation officers and judges use to make decisions about further processing, like the quality of family life or the amenability to treatment, vary by race and social class, and thus have important indirect effects (see Sampson and Lauritsen, 1997: 355-356; see also Fader, Kurlychek, and Morgan, 2014). Moreover, these direct and indirect effects are often cumulative and can become more powerful over time. Along with my colleague Robert Sampson, I have articulated a theory of cumulative disadvantage over the life course, and have suggested that a “snowball” effect occurs—that is, adolescent delinquency and its subsequent negative consequences (e.g., arrest, official labeling, and incarceration) increasingly “mortgage” one’s future development (see Sampson and Laub, 1997).

Behavioral differences in offending also play a role in generating disparities. The recent National Research Council report studying high rates of incarceration in the United States stated, “For reasons of social disadvantage, neighborhood residence, and limited life chances that disproportionately affect them, blacks relative whites have been more involved in violent crime and are more frequently arrested for such crimes” (National Research Council, 2014: 96). These findings indicate that, even if we eliminated the War on Drugs, racial disparities in the justice system would remain because of behavioral differences in offending and the ways that we have changed our response to violent crime through sentencing policies and other changes since the 1980s and 1990s. Sentencing laws have changed for offenders committing Part 1 index offenses (serious crimes) and drug offenders, and there

<sup>6</sup> Todd Clear (2007) has examined the detrimental effects of “mass incarceration” on disadvantaged communities.

<sup>7</sup> Given the greater levels of discretion in the juvenile justice system compared with the adult criminal justice system, one might expect more disparities in the juvenile justice system. See Sampson and Lauritsen (1997: 341-343) for more discussion of this point.



is little doubt that the War on Drugs has exacerbated racial disparities. Yet behavioral differences in offending, especially regarding race and violence, are also part of this complex issue. The National Research Council report stated the following: “The reason for increased racial disparities in imprisonment relative to arrests is straightforward: severe sentencing laws enacted in the 1980s and 1990s greatly increased the lengths of prison sentences mandated for violent crimes and drug offenses for which blacks are disproportionately often arrested” (National Research Council, 2014: 96).<sup>8</sup>

Since rates of incarceration were increasing during the 1990s while crime rates, especially violent crime rates, were declining, some readers may conclude that my focus on differences in criminal offending is not relevant, or, if relevant, should not take center stage. It is true that rates of crime and rates of incarceration have been moving in opposite directions, starting around the early 1990s. This divergence resulted from system changes in sentencing policies, such as mandatory sentences, mandatory minimums, and truth in sentencing laws, which dramatically increased sentence lengths for convicted offenders. Also, some states eliminated parole as a release mechanism from prison, and states that kept parole increased supervision of parolees, largely thorough mandatory drug tests. When parolees failed drug tests, their parole was often revoked (called a technical violation) and they returned to prison. In California, two-thirds of all those admitted to prison were parole violators (Petersilia, 2003: 148). Moreover, focus of police on “street-level dealers” has resulted in higher rates of arrest for blacks despite the absence of race differences in drug trafficking (National Research Council, 2014: 97). These examples show that there are many ways for the incarceration rate to increase while crime rates go down.<sup>9</sup>

The overrepresentation of disadvantaged minorities in the justice system is a serious concern. Equally significant is the growing body of research that examines the collateral consequences of justice system involvement and suggests that, while crime and justice system involvement is typically considered a dependent variable, crime and justice system involvement may also be a powerful independent variable. Three recent works illustrate this issue.

First, Kirk and Sampson (2013) have demonstrated that arrest “has a substantively large and robust impact” on dropping out of high school, taking into account neighborhood, school, family, peer, and individual characteristics, including the frequency of criminal offending. Second, in research examining discrimination in hiring practices, Pager, Western, and Bonikowski (2009) have demonstrated that race and a criminal record present a significant stigma for blacks seeking work. However, what is most disturbing is that white job applicants *with a criminal record* fare as well when seeking employment as their black counterparts *without a criminal record* (see also Pager, 2007). Third, Wakefield and Wildeman (2013) have examined the deleterious consequences of high rates of incarceration for children. Using a mix of quantitative and qualitative methods, they make a strong case that parental incarceration has not only short-term negative effects, but long-term consequences that solidify and extend social inequalities among children.

Whereas one can think of inequalities that are present prior to contact with the justice system as *input*, one can think of the effects of the justice system response that reinforce and deepen existing inequalities as *output*. In my view, the most fruitful endeavor would be to focus on reducing fundamental inequities in the United States, while also focusing on how the justice system response exacerbates existing inequality among young people in America.<sup>10</sup>

8 For an interesting and important examination of racial disparities in imprisonment long before the War on Drugs see Muller, 2012.

9 Roy and Jones (2014) make an important point, namely, young men in disadvantaged neighborhoods face “the threat of lethal violence, which remains at chronic levels in some settings even in the wake of the Great Crime Decline” (p. 4).

10 Carter and Reardon (2014) make an important distinction between research knowledge about inequality of opportunity vs. inequality of outcomes. They contend that we knew far less about the former compared with the latter.



## IV. New Directions For Research

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There are two pathways that will be useful in charting a new way forward with regard to inequality, crime, and justice. The first is to identify gaps in research. What new research is needed to answer the pressing questions concerning inequality and the justice system response? Below, I discuss what I think are the top priority areas for future research to address.

### A. Schools

Bruce Western has written that “Mass incarceration raises serious issues of social justice, because it is heavily skewed toward poor minority men with less than high school educational attainments. African American male high school dropouts are one hundred times more likely to be sent to prison than college-educated white men. Remarkably, as of 2010, more than one-third of African American male high school dropouts ages 20 to 39 were in jails or state or federal prisons” (Western, 2014, see also Western, 2006). Research by Western and others draws our attention to educational institutions. Following Zimring (2014), I believe one strategy to reduce inequality in the justice system is to focus on reducing the “hazards” of justice system involvement. In light of the Western’s findings, I also believe that the top research priority should be the so-called “school to prison pipeline” (see Wald and Losen, 2003 and Kupchik, 2014 for an overview). What is the empirical evidence for the “school to prison pipeline”? If it exists, is it an artifact stemming from selection effects?<sup>11</sup> If not, what are the underlying mechanisms linking trouble in school to subsequent arrest and incarceration?

A major component of the “school to prison pipeline” concerns school discipline and the role of the police in schools (see Hirschfield, 2008 and Morgan, Salomon, Plotkin, and Cohen, 2014). The available data from the Department of Education show that racial minorities are more likely than white students to be suspended and

expelled from school (New York Times, March 21, 2014). Zero tolerance policies have recently come under intense scrutiny, and, as a result, there have been calls for the end of school suspensions, expulsions, and the like. In my view, more research is needed in this area. Kirk and Sampson (2013) also focus attention on institutional responses to student criminality as a topic for future research. In particular, they argue that it is important to know whether differences in arrest by race/ethnicity and class are related to differences in educational attainment by race/ethnicity and class. Related is the question of how social control affects the overall culture or climate within a school, potentially influencing students and teachers alike.<sup>12</sup>

Similarly, a research focus on chronic truancy, especially in the early grades, is needed. The fact is that a child cannot learn if he or she is not in school. Edwards (2014) presents data from the Baltimore City Public Schools that show in each of the last three years, approximately 25 percent of the students have been chronically absent, which is defined as missing at least 20 days of school. She notes that this represents 10 percent of the total school year! There are a variety of reasons underlying chronic absenteeism, but recognizing truancy as a problem worthy of systematic attention is a good starting point for future research (Chang and Chung, 2014).

The two-fold challenge for schools is to create a healthy and safe learning environment for all students and to figure out ways to discipline misbehavior while keeping kids engaged in school. Commitment to school is a well-established and important protective factor. It would be helpful if future research could identify the best practices to keep and engage unruly and sometimes violent students in school. Morgan and her colleagues (2014) offer a number of important recommendations for both data collection and research on this topic. As Kupchik (2014: 101-102) notes, school failure— a strong predictor of delinquency— often leads to acting out and ultimately suspension and

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11 There are wide disparities in child well-being for children in the United States. The *Race for Results* study by the Annie E. Casey Foundation found that African American, Latino, and Native American children face a wide range of barriers to success compared with their white and Asian counterparts. One indicator assessed proficiency at reading and math during elementary and middle school (The New York Times, April 1, 2014 and *Race for Results: Policy Report*, 2014).

12 There is virtually no research on the exclusionary practices of institutions of higher education. Many colleges and universities routinely collect criminal history information in their application process, including the Common Application, which is now used by hundreds of colleges and universities. Whether and how this information is being used is not known as are the larger effects with regard to campus safety and the life course outcomes of excluded applicants.

expulsion.<sup>13</sup>

A related problem concerns organizational incentives that may have serious collateral consequences for adolescents. No Child Left Behind, for instance, created an incentive for schools to rid themselves of low performers, and problem kids tend to be low performers. So, here we have a perverse incentive that exacerbates inequality (i.e., schools get rid of problem kids to enhance their statistics). Some research has touched on this issue (see Kupchik, 2014, for example), but we need more high-quality empirical research on the topic to prevent future policy interventions from yielding organizational incentives that may have unexpected and damaging consequences.<sup>14</sup>

Another related topic worthy of more research is juvenile re-entry. The fact that delinquent youth have such a hard time re-entering school, even if they are inclined to do so, suggests that juvenile re-integration is a problematic process. Instead of re-integration, we often have segregation and isolation. The question is what can be done to better re-integrate delinquent youth back into schools without adversely affecting the school environment?

Finally, we also need to learn more about the interactions children and youth have with the police, both inside and outside of school. The police scholar Egon Bittner once quipped, “Indeed, it is not too much to say that as far as a working patrolman is concerned kids do not so much make trouble, they are trouble” (1976: 84). What do we know about how the police respond to in-school violations of law and school rules? Do we know what the consequences are of police citations in school? Do these citations have cumulative effects that are detrimental over time? More generally, how do youth view the police? How are views of the police shaped by witnessing police interactions, including arrests, with friends and family members? Drawing on her ethnographic research in Philadelphia, Alice Goffman wrote that “Children in the neighborhood played games of chase in which one child played the role of the cop. The child would push the other child down on the ground and stick his hands in imaginary handcuffs: ‘I’m

going to lock you up! I’m going to lock you up, and you ain’t never coming home!’ I once saw a 6-year-old pull another child’s pants down to attempt a cavity search” (2014: 21). This is a chilling description, and, if this view is pervasive, it has serious implications for the life-course development of children and adolescents, as well as future police-youth interactions over time (see also Rios, 2011 and Jones, 2014 for more on this issue).

This raises a larger research question about perceptions of authority and the law in general. Given the legacy of concentrated poverty in an era of “mass incarceration” among disadvantaged kids, it is likely to be detrimental not only with respect to their views of police authority, but school authority figures as well—namely, teachers, counselors, and principals. Sampson and Bartusch (1998) have studied what they call “legal cynicism”—community residents’ belief in the legitimacy of laws and moral rules—and have found it related to concentrated disadvantage. Moreover, Kirk and Papachristos (2011) have found that communities with high rates of legal cynicism also have high rates of violence. In a recent issue of the *Annals*, the special editors, Wildeman, Hacker, and Weaver (2014), have pulled together a wide range of papers examining criminal justice and civic life in America that present several lines of research worth pursuing.

## B. Police Practices

The second priority research area concerns police practices such as stop-and-frisk, as well as the police role in the ever expanding web of social control. In a thought-provoking paper, Sampson (2011) calls for a “social ledger” of the effect of incarceration, including “a societal-level account of the causal pathways” (2011: 820).<sup>15</sup> This analysis would focus on the costs and benefits (monetary and otherwise), and concentrate on unintended effects. Along similar lines, I believe we need to conduct a social ledger analysis of the effect of stop-and-frisk practices. Bergner (2014) and Zimring (2012) have noted the possibility of both benefits and costs resulting from these practices. For example, Zimring writes, “... aggressiveness in policing is a costly strategy because it imposes real disadvantages on exactly the minority poor who can least afford additional handicaps” (2012: 149). Zimring calls this a “special tax on minority males” (2012: 212). At the same time, Zimring observes “the significant benefits to minority males of lower

13 Kirk and Sampson (2011) suggest that criminality can be a consequence of the organizational characteristics of the school, e.g., low teacher commitment to students. This means the context of the school needs to be considered when assessing the linkage between misbehavior and educational failure.

14 Related to this perverse incentive to expel problem kids, a potential nudge back toward sound policy may be to require schools to count those students they expel as zeroes when computing average test scores for the school. As opposed to incentivizing schools to get rid of problem kids, this would possibly incentivize them to find a way to re-integrate and engage them in school. I thank Dave Kirk for this suggestion.

15 John Donohue recently assessed the optimal level of incarceration (2009). It is evident from the uncertainties in marginal costs vs. marginal benefits in Donahue’s analysis that research on the collateral costs of crime control must be balanced by better conceptualization and measurement of the social costs of crime.

death and injury from crime and sharply reduced rates of imprisonment...” (2012: 211, see also Preston and Elo, 2014, for a discussion of the decline in homicide mortality in New York City). Zimring concludes, “... there is no scientific foundation for regarding the burdens of aggressive policing as a necessary tradeoff for lower crime and reductions in incarceration,” and it is “inexcusable” that a rigorous test of its value is not on the horizon (2012: 211, 149; see also Rosenfeld and Fornango, 2014 and Weisburd, Telep, and Lawton, 2014). I wholeheartedly concur with Zimring here.

A related topic concerns the often hidden collateral consequences of police surveillance and control.<sup>16</sup> In her book, *On the Run: Fugitive Life in American City* (2014), Alice Goffman argues that “... the sheer scope of policing and imprisonment in poor Black neighborhoods is transforming community life in ways that are deep and enduring, not only for the young men who are the targets but for their family members, partners, and neighbors” (2014: 5). Engaging in an extensive six year ethnography in one neighborhood in Philadelphia, Goffman details how the police affect the lives and relationships of men involved in the criminal justice system. Goffman writes,

Around 6<sup>th</sup> Street, young men’s compromised legal status transforms the basic institutions of work, friendship, and family into a net of entrapment. Hospitals become dangerous places to visit, as do jobs. Their mother’s home becomes the last- known address: the first place the police will look. As the police track these men through their known addresses, bill payments, and cell phone activity and round them up at the hospital, at work, and at family gatherings, they learn to cultivate a lifestyle of secrecy and evasion, and to see those closest to them as potential informants. As long as a man is at risk of confinement, staying out of prison and routine participation in family, work, and friendships become contradictory goals—doing one reduces the chances of the other (2014: 196).

Goffman’s intriguing study demands replication, especially in other cities, using both qualitative and quantitative analyses. If she is right, the implications are significant. Not only do men and women face numerous collateral consequences when exiting prison with respect to employment, education, housing, and civic life (see National Research Council, 2014 for a review), but the reach of the criminal justice system now also extends to the courts and police, with potentially disturbing consequences. In another recent work, using longitudinal data from the

Project on Human Development in Chicago Neighborhoods, Liberman and colleagues (2014) find that juveniles who are arrested are more likely to be arrested again, regardless of whether their offending persists. This suggests that once a juvenile has a criminal stigma, he or she is subject to greater surveillance and scrutiny by the police.

Testing some of Goffman’s observations using a quantitative analysis, Sarah Brayne (2014) examines what she terms “system avoidance,” which is “the practice of individuals avoiding institutions that keep formal records” (2014: 2). Brayne’s argument is that those with any criminal justice contact—being stopped by the police, arrested, convicted, or incarcerated— are less likely to interact with “surveilling institutions,” including medical, financial, labor markets, and educational establishments, compared with those without any criminal justice contact. Using data from Add Health and the National Longitudinal Survey of Youth, she finds strong support for her argument after accounting for possible selection effects. Moreover, as a “theoretical robustness test” she examines involvement in two non-surveilling institutions— religious and volunteer associations— and finds no difference in involvement between those with contact with the criminal justice system and those without. Brayne concludes that her findings offer “a mechanism by which the criminal justice system may stratify and marginalize already disadvantaged individuals and groups,” in turn “exacerbating preexisting inequalities” (2014: 3).

Like Goffman’s work, Brayne’s research demands replication. In particular, I would like to see her findings confirmed using data from a high-risk sample rather than a general population survey, in part because I was surprised that low levels of involvement in the criminal justice system, such as police stops, seemed to have the same effect as deeper involvement, such as incarceration. We also need to know more about the use of technology such as social media and cell phone tracking via GPS. Given the prospects of linking a wide range of administrative data—so-called Big Data—the ramifications of Brayne’s research for inequality

16 Another hidden collateral consequence of justice system involvement is the legal and financial obligations imposed by the courts on convicted offenders. See Harris, Evans, and Beckett, 2010.

are far-reaching.<sup>17</sup>

## C. Thinking Patterns and Decision Making

The third priority area of research focuses on changing thinking patterns, including perspectives regarding hope for a future. Drawing on recent research in psychology and behavioral economics, Ludwig and Shah (2014) argue that “a great deal of everyone’s behavior happens intuitively and automatically, with little deliberate thought” (2014: 2). This is particularly true for disadvantaged youth, among whom minor altercations can escalate quickly to lethal violence. Cognitive behavioral therapy has been used to teach young men to “slow down and think about what they are doing,” especially in high-risk situations (2014: 2).<sup>18</sup> One such program, known as Becoming A Man (BAM), also contains a focus on cognitive skill development—namely, self-regulation, impulse control, social information processing, personal responsibility, and conflict resolution. In a series of randomized controlled trials evaluating this approach, Ludwig and colleagues have uncovered startling results, with reductions in arrest for violence in the order of 30 to 50 percent. School outcomes such as dropping out and grades were also improved (see Ludwig and Shah, 2014 for an overview).

The BAM approach has had large effects by social science standards, and demands replication. As suggested by Ludwig and Shah (2014), bringing this program up to scale is worthy of serious consideration. Of course, there is a lot that is unknown as this time. Would BAM work in other cities besides Chicago? So far, the program has focused on young black men. Would it work for other racial/ethnic groups? Will it work for girls? Right now the program’s effects are strong in the short-term, but can they be

maintained over the long-haul? What is the right dosage, and will “booster shots” be needed to sustain success? Notwithstanding these important questions, replication of the BAM approach is a top research priority.

Related to this idea of changing thinking patterns and decision-making, Melissa Kearney has written “... income equality has the potential to interact with poverty in ways that perpetuate disadvantage and exacerbate intergenerational transmission of poverty. If those at the bottom of the income distribution view middle class life as increasingly out of reach, they might forgo the mainstream climb to economic success, perpetuating the cycle of poverty and inequality” (2014: 2). Kearney and Levine (2014a and 2014b) examine the decision to finish high school and the decision to avoid pregnancy as a teen, respectively. They find that young men from low socio-economic status groups were more likely to drop out when there was a large income gap (i.e., when the gap between the bottom of the distribution and the median is wide). The same holds true for young women from low socio-economic groups who have early non-marital births. This suggests that when one sees no opportunity or hope, he or she has little incentive to make investments in the future. Thus, what Kearney and Levine call “economic despair” sets in, leading to poor choices, which, in turn, deepen disadvantage and inequality. There are several questions raised by the Kearney and Levine research, but it seems to me that the most critical challenge is figuring out how to keep disadvantaged youth engaged and hopeful about their future.

17 In contrast to the work of Goffman (2014) and Brayne (2014), criminologists such as Nagin and Weisburd (2013), and economists such as Raphael and Stoll (2014), among others, are touting the police as crucial in preventing and reducing crime. A National Research Council Report on police practices states, “we conclude that the practice described as hot-spots policing is effective in reducing crime and disorder and can achieve these reductions without significant displacement of crime control benefits” (2004 as quoted in Nagin and Weisburd, 2014: 655). Of course, the practice of hot-spots policing often is coupled with a concentration on “hot-people”—often poor, minority men living in disadvantaged neighborhoods. Moreover, the focus on displacement is narrow and does not recognize the unintended and hidden collateral consequences uncovered by Goffman and Brayne. This suggests that a social ledger analysis of police tactical strategies and practices is warranted.

18 Meta-analyses have shown that cognitive-behavior therapy is effective in reducing recidivism (see National Research Council, 2008: 46-48).



# V. How Can Extant Research Inform Policy And Practice?

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A second pathway for charting a new way forward with regard to inequality, crime, and justice is to use extant research to experiment with new policies and programs that, in turn, can be rigorously evaluated. A life-course perspective on crime offers a unique way of thinking about juvenile and criminal justice policies. Drawing on Sampson and Laub's age-graded theory of informal social control (1993b), a central theme of the justice system response ought to be on developing and strengthening an individual's bond to society. The juvenile justice system in particular should "promote the physical and psychological well-being of young people and counteract the risks associated with this developmental stage" (Ritcher, 2006: 1905). In light of the malleability of criminal behavior across the life course (see Laub and Sampson, 2003), behavioral change can happen and society benefits when it does.<sup>19</sup>

19 In my view, there is enough evidence from a wide range of sources to suggest that if we could reduce or eliminate family instability, out of wedlock births, single-parent families, multiparent fertility, and, at the same time, promote two-parent families and marriage for all, regardless of sexual orientation, inequality as we know it would be reduced considerably, especially for African Americans (see, for example, McLanahan and Sandefur, 1994, Wilson, 2002, Haskins and Sawhill, 2009 and Sawhill, 2014). There is compelling evidence that prenatal and early-childhood experiences are crucial in skill formation, which, in turn, plays a central role in achievement across the life span (Heckman, 2006). As Heckman states, "Early family environments are major predictors of cognitive and noncognitive abilities" (Heckman, 2006: 1900). Moreover, Sampson and colleagues (2008) found that living in a severely disadvantaged neighborhood reduced verbal ability of black children, on average, by >4 points. This is the equivalent of missing one year of school (see also Sharkey and Elwert, 2011). In addition, Sharkey and colleagues (2012) found that when children are exposed to homicides near their home, they exhibit lower levels of attention and impulse control, both of which are crucial for developing academic skills. Finally, Wakefield, and Wildeman (2014) find that parental incarceration has harmful effects on children, helping to explain the racial differences in child well-being. Thus, neighborhoods of concentrated disadvantage, exposure to violence, and parental incarceration all affect inequality in families and children. For a discussion of policies and programs that will create safe and stimulating environments for children, see Sharkey (2013: 190-195). These are not discussed here because they are largely outside of the scope of the justice system response.

## A. Juvenile Justice Reform

So how do we create safe environments for kids? How can the juvenile justice system help kids, or at least do them less harm? One strategy is to reform existing juvenile justice policies and revisit what many consider to be the failed juvenile justice policies that were popular in the 1970s—namely, decriminalization, diversion, due process, and deinstitutionalization (see Empey, 1979).<sup>20</sup> This follows the notion of harm reduction mentioned above (see Zimring, 2014). Fidelity is the foundation by which we test the success or failure of an idea, and, in my view, these reform ideas were never fully tested because they were never properly implemented.<sup>21</sup> Below are several ideas that can be used as policy experiments in the juvenile and criminal justice area.

### *Decriminalization*

Reduce the number of legal rules and/or organizational rules, such as zero tolerance policies in school. With respect to legal rules, one area ripe for experimentation is a change in policy regarding decriminalization of small amounts of marijuana use. Another form of decriminalization would be to limit the processing of juvenile offenders in adult court. During the 1990s, there was an expansion of nontraditional transfer mechanisms including prosecutorial discretion as to the court venue and statutory exclusionary laws. This led to more juveniles being processed in adult criminal courts where they faced the possibility of adult sanctions for their criminal activity. The processing of juvenile offenders in adult criminal court should be used only as a last resort.

20 Another potentially promising strategy is restorative justice (see Braithwaite, 1999 for a review). Regardless of what reforms are instituted, a key component of any reform package should be more research on disclosing and expunging criminal records. Given changing technologies, access to criminal records is widespread. What would be the effect if access was made more restrictive and difficult?

21 For example, in the 1970s, diversion programs were illustrative of implementation failure because, rather than reducing the number of juveniles processed in the system, the number processed increased due to net widening (see Klein, 1979).

### *Diversion*

Justice officials should not legally process first time, non-serious, and/or low risk offenders. This would allow these offenders to avoid the potentially destructive and damaging aspects of the justice system, as well as prevent the stigma resulting from collateral consequences of involvement in the justice system.

### *Due Process*

Extend all constitutional protections to all juveniles who are processed in the justice system. One concern has been that juveniles waive their Miranda rights—their right to counsel, etc.—sometimes with the encouragement of parents. One way to ensure full due process rights for all juveniles processed in the justice system would be to disallow the waiver of these fundamental constitutional rights.

### *Deinstitutionalization*

Offer alternatives to detention and out-of-home placement. Remove from institutions treatment programs for juveniles and place them in the community. By keeping juveniles in the community, educational goals will not be compromised. Use correctional institutions as the last resort when all alternatives have been exhausted.

If these reforms are successful, all youth will benefit from them, but especially disadvantaged, minority youth who are currently overrepresented in the justice system. Zimring and Tanenhaus offer “four principles for a mission-centered argument in favor of youth protection.” The four principles are: 1) Kids are different. 2) Kids change. 3) Growing up is effective crime control. 4) Juvenile courts are well suited for the special needs of young offenders (2014: 225). These principles fit nicely with the juvenile justice reforms discussed above, as well as with a life course perspective of stability and change in childhood and adolescent behavior.

## **B. Reducing Joblessness**

The second area of policy and practice concerns efforts to reduce joblessness among young adults, especially African-American men who are involved in the justice system. In my own longitudinal research with Robert Sampson, we found that attachment to the labor force was significantly related to changes in adult crime—i.e., the stronger the ties to work, the less crime and deviance (Sampson and Laub, 1993b; Laub and Sampson, 2003). We also found that ties to work were directly influenced by state sanctions. That is, incarceration as a juvenile and as an adult had negative effects on subsequent job stability, and job stability was, in turn, negatively related

to continued involvement in crime over the life course (Sampson and Laub, 1993b). More generally, the National Research Council (2014) has examined the economic impact for prisoners exiting prison and finds that they face disproportionately high unemployment and low wages. Moreover, as the result of the stigma of a criminal record, especially for black men, employment opportunities are scarce. Thus, the labor market and efforts to expand labor market opportunities for men involved in the justice system are a top programmatic priority.

Sharkey (2013: 184-190) argues that broad policies that facilitate economic growth are not enough to tackle the problem of joblessness in disadvantaged communities. Moreover, he argues that the track record for programs within communities with high rates of unemployment is not promising (see National Research Council, 2008: 41-44). One challenge is the failure of most participants to successfully complete programs in which they are enrolled. Thus, Sharkey recommends the New Hope program in Milwaukee as program worth emulating because of its intensive work support and its promising results to date.

More boldly, Bruce Western calls for a National Prisoner Re-entry Program, which would offer up to one year of transitional employment for all returning prisoners (2008). This work program would be supplemented with transitional services with respect to housing and substance abuse. Recognizing the long-established connection between employment and recidivism, Western seeks to promote economic improvement for those who need it most. Varying offender re-entry efforts in the area of employment (e.g., vocational education, job readiness, and job placement) have produced mixed results at best (see Western, 2008 for a review). The advantage of the relatively long-term transitional employment program is that “it addresses perhaps the key barrier to steady post-prison employment: the very low level of work experience among released prisoners” (Western, 2008: 14). Thus, a major component of the National Prisoner Re-entry Program will be the offering of a relatively large dosage of noncognitive skills training, such as reliability, motivation, and sociability. Western concludes, “A national program for transitional employment, housing, and drug or alcohol treatment would represent a significant commitment to the economic and social re-integration of ex-prisoners” (2008: 17). Such a program would be an excellent candidate for a series of demonstration projects, which would allow for an important opportunity to learn by doing (Moore, 1995).

# VI. Conclusion

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As mentioned at the outset, inequality has become a prominent topic of discussion and debate in the United States today. In this paper, I have focused on inequality in the justice system and concluded that, while there are important inequalities that exist prior to justice system involvement, the justice system itself is implicated in the exacerbation of inequality, especially for blacks and other minorities. I have also argued that the way to move forward in this contentious area is to build on enduring facts about crime, victimization, and the justice system response that are garnered from sound empirical research. Theory supported by empirical research, not ideology, must be our guiding light. In my view, there are two pathways that will be advantageous in charting a new way forward with regard to inequality, crime, and justice. The first is new research on inequality and the justice system response. The second is to use existing research to identify potential experiments with new policies and programs that, in turn, can be rigorously evaluated.

My hope is that we can generate new research to shape policy and practice, and simultaneously experiment with policy and practice to shape future research efforts. This will break the barriers between the research and practice communities and create a dynamic two-way street

between the two entities. Thus, it is vital that the research community craft research agendas that are relevant for policy and practice. The idea of combining rigorous research on pressing questions with an eye towards relevancy for policy and practice is captured in what I call “translational criminology” (Laub, 2012). Translational criminology offers a new view of the research enterprise by engaging practitioners and policymakers throughout the research process. This can be done through action research programs as well as research–practice partnerships. Insights from practitioners in the field ought to be a crucial part of the research process, but, at the same time, emphasizing policy and practice does not mean the abandonment of theory (see Laub, 2004). Indeed, as Sampson and colleagues have written, “translational criminology is a *process* that entails the constant interplay of theory, research, and practice. Evidence, even if causal, does not “speak for itself” to policy” (Sampson, Winship, and Knight, 2013: 611).

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